

Department of Permits and Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Baltimore County, Maryland

In the Matter of

VFW Gunpowder Post 10067

6309 Ebenezer Road

Applicant

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits & Development Management on May 20, 2009 for a Hearing on the application by VFW Gunpowder Post 10067 for licenses to operate coin-operated amusement devices. Pursuant to County Code Sections 21-4-201 and 21-4-207, the Hearing Officer has been designated by the Director of the Department to conduct this Hearing.

The following persons appeared for the Hearing: Bob Valentin, Senior Vice President for Men's Auxiliary, VFW Gunpowder Post 10067; Charles E. Brooks, Esq., Attorney for VFW Gunpowder Post 10067; Jean M. Kosloski, Esq., Attorney for VFW Gunpowder Post 10067; Jeffrey G. Cook, Esq., Assistant County Attorney.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. The VFW Gunpowder Post 10067 previously housed six coin-operated amusement devices on its premises. These machines were owned by Nick's Amusements Inc. The six machines were seized by the Baltimore County Police Department pursuant to a search warrant dated January 22, 2009.

B. Mr. Bob Valentin testified that the VFW Post wishes to purchase six coin-operated amusement devices for the use of members and guests, and to award prizes like flags or VFW logo clothing for points earned playing games. He further testified that the VFW Post is open only to members and guests and is not open to the general public.

C. Mr. Charles Brooks, Esq., attorney for the VFW Post, stated that the Police Department seized amusement devices owned by Nick's Amusements from sixty or seventy locations and that police officers saw gambling occurring in some locations but did not find gambling at the VFW Post. He stated that Nick's Amusements held the licenses. He further stated that the VFW Post is seeking licenses to operate six non-gambling machines.

D. Following this Hearing, the Hearing Officer learned that the VFW Post had not been permitted to file a license application. Upon notification, the VFW Post promptly filed a license renewal application, which was received by the Department on May 22, 2009. The application requests five licenses, for three machines described as "Cherry Master" and for a "Queen Bee" machine and a "Crazy Bug" machine.

E. On May 28, Mr. Brooks, counsel for the VFW Post, sent a letter to the Hearing Officer formally requesting that the license requirement not be applied to his client because Baltimore County Code Section 21-4-204 only applies the license requirement to devices "operated by the public." Mr. Brooks stated in his letter that "the VFW allows only its members and their guests to enter its premises and that members of the public are not allowed to enter the premises."

F. The term "public" is not defined by the County Code. Therefore, for purposes of interpretation, the term must be given its ordinary and plain meaning. Webster's Dictionary defines public as "a group of people sharing a mutual interest." The members of the VFW Post constitute such a group of people. In any event, this license requirement has been applied consistently in the past to the VFW Post and to similar organizations and entities, and lacking a clear statutory mandate it would not be appropriate for the Hearing Officer to redefine and substantially restrict the scope of the licensing statute's application.

G. The executed Search and Seizure Warrant dated January 22, 2009 found "that there is probable cause to believe that the laws relating to gambling as defined in Sections 12-102 through 12-104, of the Criminal Law Article of Maryland, dealing generally with gambling and that the law relating to gambling as defined in Section 12-302 of the Criminal Law of Maryland, dealing generally with the possession and operation of slot machines, and the laws relating to the registration of coin-operated and

other amusement devices as defined in Title 4, Article 21, Sections 201 to 209 of the Baltimore County Code, are being violated on or upon the premises known as Gunpowder Post 10067, 6309 Ebenezer Road, Baltimore, Maryland 21220.”

H. The executed Search and Seizure Warrant was supported by a sworn affidavit from two named Police Department Detectives. The affidavit included a sixteen page recitation of facts to show probable cause, including descriptions of executions of search warrants at other locations not including the VFW Post; descriptions of gambling activities directly observed at other locations not including the VFW Post; descriptions of electronic gambling devices seized from other locations; and descriptions of equipment, documentation, and money allegedly used for gambling that was seized from the owner and employees of Nick’s Amusements Inc.

I. The Police affidavit also specifically alleges that illegal electronic gambling devices were located and observed at the VFW Gunpowder Post. On page 18, the affidavit states, “During the week of January 12, 2009, your affiants along with other members of the Baltimore County Police Vice Unit revisited all 34 locations listed above.” The VFW Gunpowder Post is on that list. The affidavit specifies that five establishments were no longer in business, and states, “The remaining locations were visited in the next several days and found to contain the same type of Electronic Gambling Devices (EGD’s) that were observed on the prior visits during this investigation. These EGD’s possess, but are not limited to the following features unique to the promotion and operation of video gambling devices: 1. multiple currency/coin feature 2. multiple bet feature 3. short duration of play 4. retention ratio 5. knock off feature 6. mislabeling. Additionally, each of the electronic gambling devices possess the three elements of gambling: chance, consideration and reward.” Page 18-19. The VFW Gunpowder Post is on the list of locations. Page 19.

J. Even though no criminal charges have been brought against the VFW Post or its officers as a result of the January 2009 machines seizure, in an administrative proceeding the sworn Police affidavit is sufficient evidence to make a finding that gambling occurred on the premises, and the Hearing Officer so finds.

K. Having made a factual finding that gambling occurred on the premises, the Hearing Officer is obligated to apply County Code Section 21-4-206 in deciding whether to renew these licenses. Despite testimony at the Hearing indicating that the licenses for the seized machines were held by Nick's Amusements, the administrative file shows that licenses 0436 through 0445, for the license year 2008-2009, were held by VFW Gunpowder Post 10067, with the owner/officer identified as Quartermaster Harry Wasnees whose signature is on the application under "Licensee Information."

L. Baltimore County law provides that the Director of the Department "may suspend, revoke, or refuse to renew a license issued under this subtitle *if the licensee has ...* (5) Failed to maintain a licensed coin-operated amusement device in proper physical and mechanical condition; (6) Failed to properly supervise the premises or individuals using the premises where a licensed coin-operated amusement device is maintained and operated including ... (iii) The failure to prevent individuals from gambling on the premises." Section 21-4-206 (emphasis added). Under County law the licensee, VFW Gunpowder Post, is held responsible for proper maintenance and operation of the devices, and here the licensee failed to meet its obligation to maintain the amusement devices in proper condition, i.e. as amusement devices and not electronic gambling devices. The licensee also failed to meet its obligation to prevent individuals from gambling on the premises. Because of these failures, the licenses should not be renewed.

IT IS ORDERED THAT Applicant VFW Gunpowder Post's request for five licenses to operate coin-operated amusement devices is DENIED.

ORDERED this 16<sup>TH</sup> day of June 2009.

Signed: ORIGINAL SIGNED  
Margaret Z. Ferguson  
Baltimore County Hearing Officer

**NOTICE TO APPLICANT:** The Applicant is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Applicant may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Applicant may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

MZF/jaf